REPORT

OF THE

ATTORNEY-GENERAL

OF THE

STATE OF FLORIDA

FOR THE PERIOD

BEGINNING JANUARY 1, 1897, AND ENDING MARCH 31, 1899.

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Report of the Attorney-General.

ATTORNEY-GENERAL'S OFFICE,
TALLAHASSEE, FLA., March 31, 1899.

To His Excellency,

WILLIAM D. BLOXHAM, Governor of Florida:

In obedience to the requirements of the Constitution of this State, I have the honor to submit the following report of the matters pertaining to the office of Attorney-General, for the two years last past and to the present date:

This report has been delayed that mention might be made to as late a date as possible of important pending litigation.

W. D. Bloxham, as Governor of Florida, for the Use of the State of Florida, Plaintiff, vs. C. B. Collins, Defendant.	Covenant on Official Bond. Damages $100,000

A præcipe for summons ad respondendum, to be directed to the above named defendant, filed in the Circuit Court for Leon county on the 18th day of August, A. D. 1897, was the beginning of the State's case against said defendant to recover against him the amount of his deficit as State Treasurer, viz: $52,591.97.

The issues involved in and made up by the pleadings in the case were tried by a jury at a special term of the Circuit Court for Leon county on the 14th day of July, A. D. 1898, and resulted in a verdict for the plaintiff, the Governor, for the State of Florida, of $58,902.92, and costs, $180.91. A certified transcript of the judgment has been recorded in the office of the Clerk of the Circuit Court for Hillsborough county, where the defendant now resides. An execution has been issued and sent to the Sheriff of Hillsborough county. A return by him, will be made of his acts upon said execution at the next term of the Circuit Court for Leon county.

The Board of Public Instruction for Marion county has paid upon the judgment against Mr. Collins the sum of Eight Thousand Four Hundred and Fifty-nine and 53-100 dollars ($8,459.53), in settlement of the warrants for Fifteen Thousand dollars, made to Mr. Collins while State Treasurer.

The sum of Seventeen Thousand, Three Hundred and Twenty-one and 99-100 dollars ($17,321.99), has also been paid on said judgment by Mr. J. N. C. Stockton, Trustee.

The State of Florida *ex rel* Charles Rheinauer, vs. John W. Malone, Judge of the Circuit Court of the Second Judicial Circuit of the State of Florida.—Suggestion for Writ of Prohibition.

This suggestion in the Supreme Court grew out of a motion made before the Circuit Judge, on the part of Rheinauer, to quash the service on him of the writ of summons issued in the case of the Governor, for the use of the State, vs. Charles Rheinauer. The contention on the part of Rheinauer being that "the statute of the State of Florida authorizing the service of such writs in such actions, outside the territorial limits of the Judicial Circuit in or from which it may have issued, was unconstitutional, null and void, and the service on petitioner was ineffectual to give the court jurisdiction of the cause, or of the person of the defendant, which contention was resisted by the plaintiff and overruled by the said judge." I quote the final sentences of the *Per Curiam* decision of the Supreme Court in disposing of the suggestion: "Nothing in the suggestion filed excludes the idea that the Judge of the Second Judicial Circuit had jurisdiction of the subject-matter involved in the suit between the Governor, in behalf of the State, and the petitioner, Rheinauer. The affidavit filed by the Atorney-General, at the institution of the suit, indicates the accrual of the cause of action in Leon county, and this is not questioned by the objections made by petitioner. On the service had upon him petitioner questioned, by the motion to quash, the rightful acquisition of jurisdiction over his person, but was met with an adverse ruling on his motion invoking the action of the court thereon, and the decision of the court was within the sphere of its jurisdiction over the matter. If it be conceded that the decision was wrong, which is not intimated, it would afford no ground for the issuance of a writ of prohibition, as the remedy to correct such an erroneous ruling is plain and adequate by writ of error after final judgment, should one be rendered against petitioner.

The suggestion shows no sufficient cause to authorize the issuance of a writ of prohibition, and the application therefor is denied."

W. D. Bloxham, as Governor, etc., Plaintiff, vs. Charles Rheinauer, Defendant.—Covenant Damages $15,000.

W. D. Bloxham, as Governor, etc., Plaintiff, vs. L. M. Thayer, Defendant.—Covenant Damages $10,000.

W. D. Bloxham, as Governor, etc., Plaintiff, vs. W. Sherman Jennings, Defendant.—Covenant Damages $5,000.

Suits against all the above named defendants, were instituted at the same time as that against Mr. Collins, and were tried at the same term of the court, and resulted in a verdict in each case in favor of the State of Florida, viz: $15,000 against Charles Rheinauer, $10,000 against L. M. Thayer, and $5,000 against W. Sherman Jennings, and costs in each case of $11.86. Certified transcripts of the judgments have been filed and recorded in the county where each defendant resides, and an execution has been issued and placed in the hands of the Sheriff of their respective counties. The sheriffs are required by law to make their return upon the executions at the next term of the Leon County Circuit Court.

W. D. Bloxham, as Governor, etc., Plaintiff, vs. W. A. Hocker, Henry G. Dunn and Alice E. Dunn, as Executors and Executrix of the will of John F. Dunn, deceased, Defendants.—Covenant Damages $40,000.

This case was also tried at the same term of the court as the above cases. The jury did not agree and a mistrial resulted. The case was again tried at the fall term of the Circuit Court for Leon county, and resulted in a verdict for the State of Florida for $40,000, on the 10th day of December, 1898, and costs $252.91. A certified transcript of the judgment in the case was recorded in the office of the Circuit Clerk for Marion county, and an execution for the amount of the judgment was placed in the hands of the Sheriff of said county. A description of all the real estate belonging to the estate of said John F. Dunn was sent to said Sheriff, and he levied upon the same. Upon the same day of the levy the executors of the estate of Dunn filed in the County Judge's office for Marion county, a suggestion of the insolvency of said estate. The effect of this suggestion will be to suspend the action of the Sheriff in advertising and selling the real estate levied upon. The executors filed a schedule of the real estate and assets of the estate, and the County Judge is proceeding to settle said estate in the manner prescribed by law. Counsel for the State, will, at an early day, file a bill for an accounting against the executors of Dunn's estate, covering their manage-

ment of said estate for the past six years, and praying for the sale of the real estate to pay the judgment in favor of the State of Florida.

This case was a closely contested one. John F. Dunn, on the 19th day of December, A. D. 1892, together with Charles Rheinauer, L. M. Thayer and W. Sherman Jennings, signed, as sureties, the official bond of C. B. Collins, who qualified as State Treasurer early in January, A. D. 1893. Mr. Dunn died early in February, 1893. Mr. Collins, in 1896, was in default, as such State Treasurer, to the State of Florida in the sum of $52,591.97. All the above cases grew out of his default. In the case against Dunn's executors the main plea, and the one on which it was sought mainly to defeat the State's claim, was that Mr. Dunn at the time he signed Mr. Collins' official bond, was so unsound of mind as to be incapable of understanding and comprehending the nature and effect of his act; that he was *non compos mentis*, and not capable of making a valid contract. The array of testimony produced orally in open court by witnesses, and submitted by way of depositions taken upon commission, to prove the unsound mental condition of Mr. Dunn when he signed the bond, was very formidable. Ten witnesses, among them Mrs. John F. Dunn, and the others business men who had known Mr. Dunn in December, 1892, and before, testified in open court and by deposition, a majority testifying that in their opinion Mr. Dunn was mentally incapable of making a valid contract at the time he signed the Collins bond. Three physicians testified likewise, with the exception that Dr. Newsome thought that Mr. Dunn, when he signed the bond, was capable of understanding the nature of an ordinary business transaction on days when he was conscious and capable of walking and conversing. The plea of *non compos mentis* might possibly have been established by this array of testimony but for the testimony of Mr. Charles W. White, of Citra. I attended the Democratic State Convention at Orlando on the third day of August, 1898, and there met Mr. White. Knowing his large experience in business matters in this State, and his wide and intimate acquaintance with the people of his section, I inquired of him as to his knowledge of Mr. Dunn's mental condition in December, 1892. As a result of that conversation the counsel for the State caused Mr. White to be subpœnaed as a witness for the State on the trial against Dunn's executors. At the trial Mr. White testified in substance, viz: That he had an extended conversation with Mr. John F. Dunn about the 11th, 12th or 13th of December, 1892, at the Ocala House, in Ocala. Asked by counsel for the

State, "How did you find his [Mr. Dunn's] mental condition, his capacity as to understanding business matters, in this interview?" Mr. White replied: "Nothing in the interview suggested to me any idea as to any impairment of his mind. In fact, I never heard any such suggestion had been made until in recent months. I had the interview with him in reference to the Ocala Co., a corporation I happened to be president of at that time, without having any monetary interest in it. Prior to my election as president I had been approached by him and Mr. Agnew, who represented what were apparently conflicting interests. Each separately, and without interviewing the other, asked me if I would act as president of that corporation At the time I had this interview with Mr. Dunn, we also discussed some questions on the subject of the phosphate business. I wanted to talk to him in reference to a certain proposition touching phosphate that was pending before me; wanted his views as to that proposition. I confess myself as having been shocked at the evidence of his waning physical power. It seemed to me that there was muscular and physical disintegration taking place, but there was nothing that indicated to me that there was mental impairment. He expressed himself plainly and clearly. There was not the energy I had known in him before. He told me his condition was very bad, that he had been assured his life would not last long, and he was wanting not to take up any new matters of business, but take up and dispose of such earthly affairs as he had, in the best order before his death. He seemed to be somewhat depressed, and talked about it as a certainty that he was going to die, but his mind seemed perfectly clear. From what I saw of Mr. Dunn, my knowledge of him, and the manner of his conversation with me on those occasions, my impression then was, and now is, that he would understand clearly the nature of a business transaction, but that he would be unwilling to take up any new business proposition that required any expenditure of any nervous force in its investigation. He told me in this interview that he was going to make Mr. Collins' bond. I had been approached by Mr. Agnew, who told me he would like to go on Collins' bond, and asked me to speak to Collins about it, and I told Mr. Dunn this, and Mr. Dunn said the bond was all right; and that he had told Collins he would make it, and he was going to do so. Agnew was President of the other National Bank of Ocala. I told Mr. Dunn that I had a conversation with Agnew and what Mr. Agnew said. I don't know anything after the time that I had that conversation with him, which was the longest one of the three conversations I had after his return from the

northern trip. The other occasions when I saw Mr. Dunn after that, it was simply to speak to him with a friendly expression of personal interest in him, glad to see him or something like that. On the three occasions mentioned there were references to business matters."

[NOTE.—I did not quote in *hæc verbis* the testimony of Mr. White as to the extent in length of his conversation with Mr. Dunn. It is not yet agreed among counsel as to what Mr. White said. The stenographer makes him say "the conversation was not extended." Judge Young's and my positive recollection of Mr. White's testimony on this point is that he said "the conversation was extended," meaning his conversation with Mr. Dunn shortly preceding the signing of the bond. I have a letter from Mr. White subsequent to the trial saying that he testified that "the conversation was extended."]

The above testimony was most vital to the State's case. The day Mr. Dunn signed the bond it was shown by the testimony of defendant's witnesses that Mr. Dunn walked from his rooms in the Ocala House, with Mr. A. G. Eagleton, across the street to the Merchants National Bank of Ocala, of which he was President, and there signed the bond and returned to the hotel. This physical ability of Mr. Dunn, in connection with Mr. White's testimony showing Mr. Dunn's previous promise to sign Mr. Collins' bond, and the clear mental condition of Mr. Dunn as testified to by Mr. White, warranted the jury in finding a verdict for the State.

A writ of error has been sued out on behalf of Dunn's executors, and the case will be heard in the Supreme Court some time in June next. Counsel for the State do not believe that the judgment of the court below will be reversed on the evidence. They confidently believe that the verdict will stand. The rule of law is well established in this State that where the testimony is conflicting, the jury is to settle the conflict, and where there is evidence to support the verdict, it will not be disturbed.

Exactly what in money the State will derive from these judgments in the above cases, cannot yet be ascertained. I am informed that much of the real estate belonging to the estate of Mr. Dunn has been sold for taxes, some to individuals and some to the State. I would recommend that the Legislature at once take steps to ascertain the facts relative to these Dunn estate lands, and make proper provision to protect the interests of the State in regard thereto.

In these cases against C. B. Collins, Charles Rheinauer, L. M. Thayer, W. Sherman Jennings and Dunn's executors, Judge W. B. Young, of Jacksonville, was my associate counsel. The Legislature of 1897 appropriated a retaining fee of five hundred dollars for an assistant to the Attorney-General in the conduct of these cases. Judge George P. Raney, of Tallahassee, and Hon. R. A. Burford, of Ocala, represented the defendants at the trial in the Dunn executor's case. Judge Young has made at least a half dozen visits to this city, in the conduct of these cases, remaining here several days at a time. These visits, with railroad fare included, have consumed quite a portion of this retainer fee. I will at the proper time appear before the appropriate committee of the Legislature, and request that a fee commensurate with Judge Young's services to the State, be allowed in his behalf. To his energy and ability the State owes, by much the greater part, the successful termination of these bond suits.

In addition to the above services Judge Young represented the State in the following suit:

G. C. Stapylton, Receiver, vs. J. N. C. Stockton, Trustee, J. B. Whitfield, State Treasurer, et al.—U. S. Circuit Court.

Stapylton, Receiver, brought suit in the Circuit Court of the United States, at Jacksonville in June, 1897, making the present State Treasurer a party defendant. This in effect made the State a party, without authority of law. Hon. W. B. Young, representing the State, interposed a demurrer, and the bill as to the State Treasurer was dismissed upon the said demurrer. The suit grew out of the loans by ex-State Treasurer Collins to the Merchants' National Bank of Ocala, Stapylton being receiver of said bank.

The State of Florida *ex rel.* William H. Reynolds, as Comptroller of the State of Florida, and John A. Pearce, as Sheriff of Leon county, Florida, Plaintiff, vs. John F. White, Judge of the Third Judicial Circuit of Florida, and the Florida Central and Peninsular Railroad.—Suggestion for Writ of Prohibition.

On the 13th day of September, A. D. 1897, Judge John F. White, of the Third Judicial Circuit (Judge Malone of the Second Judicial Circuit being disqualified), made an order which in effect opened up for review that portion of a decree holding the line of railroad from Fernandina to Cedar Keys liable for the back taxes upon same for the years 1879, 1880 and 1881. On the 22d day of March, 1898, I filed in the Supreme Court a suggestion for a writ of Prohibition to be di-

rected to the said Judge and the said Railroad Company restraining them from proceeding to entertain jurisdiction in the matter. On the 30th day of July next thereafter the Supreme Court directed the writ of Prohibition to issue.

Florida Central and Peninsular Railroad Company, vs. William H. Reynolds, as Comptroller, and John A. Pearce, as Sheriff of Leon county, Florida.

This suit, on the part of the Railroad Company, to enjoin the State from collecting the back taxes on its property for the years 1879, 1880 and 1881, will be heard finally at the next June term of the Supreme Court. The taxes now in dispute are those upon the lines of road between Jacksonville and Chattahoochee and the St. Marks and Monticello branches. The papers in the record relating to these taxes were lost in the latter part of 1898, whether by me, or the Clerk of the Circuit Court, or counsel for the Railroad Company, is not known. I think each of the three parties would affirm that it was not by his negligent act. The following agreement explains itself, viz:

The Florida Central and Peninsular Railroad Company, vs. William H. Reynolds, Comptroller of Florida, and John A. Pearce, Sheriff of Leon county.—Second Judicial Circuit of the State of Florida. In the Circuit Court for Leon county. In Chancery.

The original papers in the above suit beginning with the notice and Petition for Bill of Review and order of court, and Bill of Review filed during the year 1897, having been lost, it is hereby stipulated and agreed by the undersigned counsel and the Comptroller of the State of Florida, that counsel for Plaintiff will by the first day of March, A. D. 1899, submit to the Judge of the Third Judicial Circuit of Florida, (Judge Malone of the Second Judicial Circuit being disqualified) true copies of said lost papers and apply for an order by said Judge establishing such copies as the record in the case and counsel for the State agrees hereby to join in such application. It is further agreed, that the testimony of Phillip Walter, Adolph Engler and A. B. Hawkins shall be taken upon the interrogatories and cross interrogatories sued out already, and filed in the Circuit Clerk's office for Leon county, Florida, on or before the first day of March, A. D. 1899, and that in all other respects counsel for both the Florida Central and Peninsular Railroad Company, and counsel for the State shall expedite said litigation now pending in the above case, and involving the back taxes for 1879, 1880

and 1881, with all possible dispatch so that upon the judgment of the Circuit Court upon the questions involved in said suit, the appeal taken by either party thereto, may be had by the first day of the next June term of said court, in order that the said litigation shall end speedily to the interest of both the State and said Railroad Company. And upon this agreement being signed by the respective parties, it is understood and agreed that the collection of the back taxes on the lines of railroad from Fernandina to Cedar Keys, shall await the determination by the Supreme Court of Florida of the question of the collection of the back taxes for 1879, 1880, 1881 upon the line of road from Jacksonville to Chattahoochee and branches.

JOHN A. HENDERSON,
Sol. for Fla. C. & P. R. R. Co.,
WM. H. REYNOLDS,
Comptroller,
W. B. LAMAR,
Attorney-General.

It was found to be impossible to carry into effect the agreement upon the exact date mentioned, or to take the depositions within said time.

On the 9th day of the present month an order was signed by Judge White, of the Third Judicial Circuit (Judge Malone of the Second Judicial Circuit being disqualified) re-establishing the record in said suit, extending the time to April 15th, next, for taking testimony and appointing two examiners to take said testimony, one in Jacksonville, Hon. J. E. Hartridge, and Wm. Miller in New York City. If the suit can be appealed by either party to the next June term of the Supreme Court, then a decision can be had, no doubt, by September 1st, and a piece of lengthy litigation ended so far as the State courts are concerned. It was deemed advisable by the Comptroller and the Attorney-General to enter into the above agreement with counsel for the railroad company. It was thought that it would expedite the final determination upon the main question involved. The back taxes on the line of road from Fernandina to Cedar Keys being about $33,000, and the back taxes on the line of railroad from Jacksonville to Chattahoochee and branches being about $63,000. If the Supreme Court of Florida sustains the claim of the State to these back taxes from Jacksonville to Chattahoochee and branches the whole amount of $96,000 would then be due and collectable. Counsel for the railroad company in such event, may seek to carry the case to the Supreme Court of the United

States. Even if said court should assume jurisdiction of the case the Federal question (if there is any) involved, has been adjudicated already in the case of Louisville and Nashville R. R. Co., vs. Palmes, decided at the October term, 1883, of the United States Supreme Court. (L. & N. R. R. Co. vs. Palmes, 109 U. S. 244.)

Ex-parte E. W. Bailey—Habeas corpus.

Bailey was arrested at Fernandina for violation of Section 8 of Chapter 4547, Laws of Florida, Acts of 1897, and was committed to jail by the County Judge of Nassau county in default of bail. Thereupon Bailey applied for and obtained from the Circuit Judge of the Fourth Judicial Circuit a writ of *habeas corpus*, and was upon the hearing of the same remanded to the custody of the Sheriff under the County Judge's warrant of commitment. The case was brought to the Supreme Court upon writ of error and disposed of by the Court in the following language:

"The legal effect of the language used in said Section 8 is to require the official sampler or his duly appointed deputy *personally* to perform the act of drawing, mixing, labeling, filing and preserving *this official sample*, and prohibits the drawing or taking of *any such official sample to be filed and kept by the official sampler*, by any one else except by such *official sampler* or his deputy. If any other person than such *official* undertakes to perform the physical act of *drawing 'the' official sample*, to be filed, labeled, kept, represented and used *as such by the official sampler*, then, and then only, would he violate the provisions of said section of this law. The legal effect of said section is not to prohibit the owner of phosphates or his authorized agent from drawing and taking samples thereof wheresoever, whensoever and as often as he pleases, for his own private purposes and uses, so long as he does not trench upon the duties of the *official sampler* by undertaking to *draw for him 'the' official sample* that the law requires such official *personally* to draw, label and preserve within his official keeping. No such violation of the law is pretended to be charged in the affidavit upon which this arrest was made, nor do the existent facts as agreed upon show any violation of this or any other law.

"The plaintiff in error has been charged with, arrested for and held to answer an inoffensive act, that violates no law, and for which no court has jurisdiction to try him or to punish him. Finding this to be the case, as we are permitted to do by the settled rule of this court, upon a proceeding in *habeas corpus* (Ex-parte Hays, 25 Fla. 279, 6 South Rep. 64; Church

on Habeas Corpus, Sec. 349), the order of the Circuit Judge remanding the plaintiff in error to custody is reversed, with directions for the entry of an order discharging him from custody."

N. B. Broward, Appellant, vs. The Duval Athletic Club, Appellees.

This is the *cause celebre* of the glove contest, *alias* the prize fight of J. J. Corbett and Charles Mitchell. Florida has a stringent statute against prize fighting now, and while prize fights are still read about with attention even in this State, by reason of said statute, the subject has lost its interest to those concerned about the wickedness of such exhibitions on our own soil. It is sufficient merely to quote the head-notes to the opinion of the Supreme Court, where the case came on appeal from the Circuit Court for Duval county, viz:

"Appeal will be dismissed when nothing can result therefrom."

"An appellate court will not entertain an appeal where it is plain that nothing can be accomplished by its decision, whether it be for or against the appellant."

Judge W. A. Hocker, of the Fifth Judicial Circuit, and Judge Minor S. Jones, of the Seventh Judicial Circuit, have called my attention to certain defects in the statute laws of this State which have been brought to their attention. I will submit their recommendations to the Legislature. Judge Jones sent to me two bills to remedy the defects indicated by him. I will cause them to be introduced into the Legislature for consideration.

The number of criminal cases brought to the Supreme Court by writ of error from the Circuit Courts and Criminal Courts of Record number about twenty-five per annum, in which I appear and file briefs or orally argue same, as the case may be. It has not been customary in this office to set these out by mention *in extenso*; such making mere padding for a report.

The "copy" will soon be in the hands of the printer for volume number forty (XL) of the report of the decisions of the Supreme Court of Florida, and will doubtless be at an early date in the hands of the legal profession and the public.

All of which is respectfully submitted.

WILLIAM B. LAMAR,

Attorney-General.